In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-804

ROBERT L. CROUSE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petition raises three questions: (1) Whether the evidence presented was sufficient to prove that threats by petitioner against a grand jury witness were made to impede a federal grand jury investigation; (2) whether the trial court erred in admitting evidence of other misconduct by petitioner; and (3) whether the prosecution inserted into the trial misleading evidence involving a friend of petitioner's.

After a jury trial in the United States District Court for the Southern District of West Virginia, petitioner was convicted on one count of obstructing justice in January 1972 by threatening Mary F. Lucas (a federal grand jury witness) with death if she testified about petitioner, in violation of 18 U.S.C. 1503; one count of obstructing

justice in January 1974 by threatening Mrs. Lucas with the loss of her job if she testified against petitioner, also in violation of 18 U.S.C. 1503; and one count of obstructing justice in January 1974 by threatening Mrs. Lucas with the loss of her job if she continued to give the F.B.I. information concerning petitioner, in violation of 18 U.S.C. 1510. Petitioner received concurrent sentences of three years' and two years' imprisonment, respectively, on the 1503 counts; he was sentenced to five years' probation on the 1510 count, the period of probation to commence upon completion of his imprisonment. The court of appeals affirmed *per curiam*.

In June of 1971, the Pittsburgh Organized Crime and Racketeering Field Office of the Department of Justice initiated a grand jury investigation in Charleston, West Virginia, concerning interstate prostitution activities, violations of federal narcotics and gambling laws, and corruption within the Charleston Police Force (Tr. 18-19, 38-39).[1] Two of the principal subjects of the investigation were petitioner, as head of the Charleston Police Department's Vice Squad, and Donna Pistore, madame of a house of prostitution in Charleston (Tr. 27-28, 448). Among the grand jury witnesses was petitioner's former girl friend, Mrs. Mary F. Lucas, who testified before the grand jury on January 12, 1972 (Tr. 29-33, 42). A continuing F.B.I. investigation of prostitution and gambling in Charleston prompted a second grand jury appearance by Mrs. Lucas in January of 1974 (Tr. 55-56, 171-172).

On the Friday night preceding Mrs. Lucas' 1972 grand jury appearance, petitioner came to her home and tried to persuade her not to testify. When Mrs. Lucas refused

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[1] "Tr." refers to the trial transcript, which the government is lodging with the Court.

to see a lawyer named by petitioner, petitioner told her "that I didn't like living too well and that I might be dead sooner than I thought" (Tr. 82-84). After Mrs. Lucas had testified before the grand jury, petitioner called her several times at home to find out whether she had been asked during her testimony about Donna Pistore and about a certain robbery. He said, "Mary, if you send me to prison, I will kill you. And then I will kill myself" (Tr. 87).

In July of 1973, Agent T. A. Meek of the Federal Bureau of Investigation questioned Mrs. Lucas about petitioner and informed her that she might be called again before a grand jury (Tr. 158). On January 8, 1974, Agent Meek again interviewed Mrs. Lucas and again questioned her about petitioner (Tr. 165). The following day, January 9, petitioner heard about the January 8th interview. On January 10, while Mrs. Lucas was driving home with a girl friend, petitioner signaled to her from a police cruiser to stop. After petitioner persuaded Mrs. Lucas to get out of her car and speak with him privately, he questioned her about her recent conversation with the F.B.I. agent. Mrs. Lucas refused to repeat the conversation and expressed the hope that petitioner and his associates would be caught (Tr. 61, 90-92, 169-170). Petitioner said, "Mary, you know, if you testify I can make you lose your job. I happen to be a personal friend of Dick Barber's and Governor Moore's" (Tr. 91, 172).[2] When Mrs. Lucas re-entered her car, she was visibly upset; she explained to her girl friend, Connie Burford,

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[2]At the time, Mrs. Lucas was employed by the West Virginia Alcoholic Beverage Control Commission (Tr. 77).

that petitioner had threatened her with the loss of her job and that he would make good on the threat (Tr. 191). On January 16, 1974, Mrs. Lucas described to Agent Meek her January 10th encounter with petitioner, and on January 17, 1974, she again described the encounter in her second appearance before a federal grand jury (Tr. 171-172).[3] Shortly thereafter, petitioner was indicted and arrested on the instant charges (Tr. 177).

1. The evidence at trial amply showed that petitioner's threats to Mrs. Lucas in January of 1972 were directed against her scheduled appearance before a federal grand jury investigating possible violations of federal statutes relating to interstate prostitution, narcotics and gambling. It is immaterial whether a state grand jury was contemporaneously investigating the possibility that there had also been violations of state statutes. It is likewise immaterial whether federal violations had in fact occurred. The gravamen of the charge is that a federal grand jury was investigating the possibility that such violations had occurred and that petitioner made threats in an endeavor to impede and obstruct that investigation. Petitioner admitted the existence of that investigation at trial (Tr. 465, 541) and again admits it in his petition for certiorari (Pet. 10).

Similarly, petitioner's threats against Mrs. Lucas on January 10, 1974, were connected with and occasioned by Agent Meek's interview of Mrs. Lucas two days previously and clearly related to her upcoming grand jury testimony. In July of 1973, Agent Meek had advised Mrs. Lucas that she might be called again by the grand jury

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[3]During 1972, a state grand jury was also investigating charges of prostitution and gambling in Charleston. Mrs. Lucas was subpoenaed to testify before the state grand jury, but the subpoena was quashed (Tr. 175-177).

to testify about petitioner. In January, 1974, a federal grand jury was in fact continuing the investigation of prostitution and corruption in Charleston, and Mrs. Lucas testified before that grand jury on January 17, 1974.

In sum, the government adequately demonstrated that petitioner's threats, both in January of 1972 and January of 1974, were directed against Mrs. Lucas' testifying before and cooperating with a federal grand jury investigating petitioner's connection with Charleston prostitution and gambling.

2. Petitioner contends (Pet. 11-15) that the trial court improperly admitted evidence of other crimes. It is settled law, however, that evidence of consistent prior conduct and related illegal acts are admissible to prove motive, knowledge and intent. See, *e.g.*, *United States* v. *Silvern*, 494 F.2d 355, 360 (C.A. 7). Particularly is this so in a prosecution under 18 U.S.C. 1503, for the jury should know the nature of the offense under investigation and the extent of the defendant's involvement in order to assess his motive in intimidating the witness. *United States* v. *Bradwell*, 388 F.2d 619 (C.A. 2), certiorari denied, 393 U.S. 867.

Here, in cross-examination of government witnesses and in his own testimony at trial, petitioner disavowed any connection with prostitution and gambling in Charleston and vigorously attacked the credibility of Mrs. Lucas. He denied all aspects of Mrs. Lucas' testimony regarding the January 1972 threat (Tr. 467, 469-472) and denied threatening her with the loss of her job or acting with any criminal intent during his January 1974 encounter with her (Tr. 492-494). Accordingly, evidence of petitioner's involvement with known prostitutes and gamblers was properly admitted by the court. Moreover, at the outset of trial (Tr. 26-27), following petitioner's cross-examination

(Tr. 603-604), and again in its charge to the jury (Tr. 707-708), the court clearly instructed the jury on the limited purpose for which such evidence could be considered.

Finally, we note that the bulk of the evidence specified by petitioner as inadmissible (Pet. 7)[4] was in fact admitted at trial without any objection in regard to relevancy, except for a broad objection to "evidence of some other alleged crimes involving Robert Crouse." This objection was made at the beginning of the trial and was coupled with a request that, if the objection were overruled, the court should give a cautionary instruction as to the limited purpose for which the evidence was received (Tr. 18-22). Petitioner then made it clear that he did not want the instruction repeated each time such evidence was admitted but preferred that it be given only at the conclusion of the trial (Tr. 22-26).[5]

3. Petitioner also claims that the prosecutor inserted into the trial misleading evidence regarding one Hobart Booth, to the effect that Booth, a friend of petitioner, had gone to Mrs. Lucas' office in January 1974 and told Mrs. Lucas not to talk to the F.B.I. However, the record reveals that petitioner's sole objection to Mrs. Lucas' testimony regarding Booth was sustained (Tr. 94-95). Thereafter, petitioner himself testified without

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[4]His listing of allegedly inadmissible evidence is not accompanied by any reference to the trial transcript.

[5]Such a limiting instruction was in fact given as a part of the general instructions at the conclusion of the trial. See Tr. 707-709.

objection that Booth said he had talked with Mrs. Lucas "as a friend" (Tr. 610). Moreover, the substance of Booth's grand jury testimony, which was favorable to petitioner, was presented to the jury during redirect examination of petitioner, over the government's objection (Tr. 609-611).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1975.

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